

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sasha Pavlova	Team: Squad #06	CCRB Case #: 202103467	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/08/2021 9:55 AM, Tuesday, 06/08/2021 10:23 AM, Tuesday, 05/03/2022 12:00 AM	Location of Incident: Flushing Avenue subway station (J & M lines) 90th Precinct Stationhouse	18 Mo. SOL 12/8/2022	Precinct: 83		
Date/Time CV Reported Tue, 06/08/2021 10:54 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/08/2021 10:54 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mario Valencia	14562	937668	TB DT33
2. POM Mardochee Saintphard	04682	966321	090 PCT
3. LT Anthony Correia	00000	925124	090 PCT
4. PO Manuel Garcia	15488	967886	TD 33

Officer(s)	Allegation	Investigator Recommendation
A.POM Mario Valencia	Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia used physical force against § 87(2)(b)	
B.PO Manuel Garcia	Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Manuel Garcia used physical force against § 87(2)(b)	
C.POM Mario Valencia	Discourtesy: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia spoke discourteously to § 87(2)(b)	
D.POM Mario Valencia	Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia hit § 87(2)(b) against a window.	
E.PO Manuel Garcia	Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Manuel Garcia hit § 87(2)(b) against a window.	
F.POM Mario Valencia	Abuse: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia damaged § 87(2)(b) property.	
G.PO Manuel Garcia	Abuse: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Manuel Garcia damaged § 87(2)(b) property.	
H.POM Mario Valencia	Abuse: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia refused to provide his shield number to § 87(2)(b)	
I.POM Mardochee Saintphard	Abuse: At the 90th Precinct Stationhouse in Brooklyn, Police Officer Mardochee Saintphard did not process § 87(2)(b) complaint regarding officers.	

Officer(s)	Allegation	Investigator Recommendation
J.LT Anthony Correia	Abuse: At the 90th Precinct Stationhouse in Brooklyn, Lieutenant Anthony Correia did not process § 87(2)(b) complaint regarding officers.	
K.POM Mario Valencia	Untruthful Stmt.: Police Officer Mario Valencia provided a misleading official statement to the CCRB.	

Case Summary

On June 8, 2021, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On June 8, 2021, at approximately 9:55 a.m., § 87(2)(b) entered the Flushing Avenue subway station in Brooklyn, through the emergency gate without paying. PO Mario Valencia and PO Manuel Garcia of Transit District 33, who stood inside the subway station, approached § 87(2)(b) and pushed him out through the open gate (**Allegations A and B: Force:** § 87(2)(g)). PO Valencia allegedly told § 87(2)(b) to “get the fuck” out (**Allegation C: Discourtesy:** § 87(2)(g)). PO Valencia said, “Don’t fucking touch me” (**within Allegation C**). PO Valencia and PO Garcia allegedly pushed § 87(2)(b) against a window and allegedly damaged his cell phone as a result (**Allegations D and E: Force:** § 87(2)(g)) (**Allegations F and G: Abuse of Authority:** § 87(2)(g)). § 87(2)(b) asked for PO Valencia’s shield number. PO Valencia allegedly refused to provide his shield number (**Allegation H: Abuse of Authority:** § 87(2)(g)).

At 10:23 a.m., § 87(2)(b) went to the 90th Precinct station house in Brooklyn and spoke with PO Mardochee Saintphard of the 90th Precinct. PO Saintphard did not process § 87(2)(b) complaint against PO Valencia (**Allegation I: Abuse of Authority:** § 87(2)(g)). § 87(2)(b) then spoke to Lt. Anthony Correia of the 90th Precinct. Lt. Correia allegedly refused to process § 87(2)(b) complaint (**Allegation J: Abuse of Authority:** § 87(2)(g)).

PO Valencia provided a misleading official statement to the CCRB (**Allegation K: Untruthful Statement:** § 87(2)(g)).

No arrests were made, and no summonses were issued.

BWC was obtained for this incident (BR 01-03).

Findings and Recommendations

Allegation A – Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia used physical force against § 87(2)(b)

Allegation B – Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Manuel Garcia used physical force against § 87(2)(b)

The MTA surveillance footage (BR 04) showed at 01:13 minutes that § 87(2)(b) entered the subway station through the open emergency gate. At 01:46 minutes, PO Valencia and PO Garcia pushed § 87(2)(b) out through the gate. § 87(2)(b) stiffened his body, and the officers visibly had difficulty moving him. The officers held § 87(2)(b) by his backpack and his arms, and let go of him at 01:52 minutes, when he was out of the gate.

PO Valencia’s BWC (BR 01) showed that PO Garcia approached § 87(2)(b) in the subway station, and they spoke. The audio did not begin until 01:00 minute. PO Garcia attempted to guide § 87(2)(b) out of the station by touching his back and nudging him forward, but § 87(2)(b) continued speaking and did not move. At 00:57, PO Valencia pushed § 87(2)(b) from the back with his palms, while PO Garcia guided § 87(2)(b) by the arms and his backpack toward the emergency gate. At 01:03 minutes, PO Valencia’s BWC fell and did not visually capture the next minute of the incident.

PO Valencia’s and PO Garcia’s memo books (BR 05 – 06) noted that § 87(2)(b) was ejected from the subway and that PO Garcia prepared an ejection report.

The Transit Ejection Report (BR 07) prepared by PO Garcia showed that an unknown Black male in his 20s was ejected from the mezzanine for unauthorized entry and for being disorderly at Flushing Avenue subway J line.

§ 87(2)(b) testified (BR 08) that he entered the Flushing Avenue subway station through an open emergency gate without paying the fare. PO Garcia told § 87(2)(b) to speak with the MTA clerk. § 87(2)(b) explained that he did not have money. PO Valencia approached § 87(2)(b) told him that he was being disrespectful, then grabbed him by his arms and pushed him backwards. PO Garcia pushed § 87(2)(b) by his arms and upper body out of the gate.

PO Valencia testified (BR 09) that he and PO Garcia stood by the entrance of the subway station when PO Garcia observed § 87(2)(b) enter through the emergency gate. PO Garcia told § 87(2)(b) to pay the fare or leave the station. § 87(2)(b) did not leave and said he had to go to work. PO Garcia then guided § 87(2)(b) out by his arms. § 87(2)(b) resisted by not moving his body and flailing his arms. PO Valencia pushed § 87(2)(b) toward the exit door by shoving his backpack with his palms extended forward. The only reason PO Valencia pushed § 87(2)(b) was to eject him from the subway station. When presented with the Transit Ejection Report, PO Valencia testified that the “disorderly” referred to § 87(2)(b) causing a scene and not complying with the officers’ orders.

PO Garcia’s testimony (BR 10) was consistent with PO Valencia’s account of the incident, except for the following. Both PO Garcia and PO Valencia guided § 87(2)(b) out by his arms.

When a member of service must gain compliance of an uncooperative subject, the member should apply no more than reasonable force necessary to gain control. Patrol Guide Procedure 221-02 (BR 11). No person shall, for purposes of gaining entry into a facility, proceed over or under any turnstile or otherwise proceed in any other unauthorized manner through an exit gate or through or past any other point at which a fare is required or collected. MTA Rules 1050.4 (BR 12). Any person who is observed by a police officer to be violating any of these rules and who may receive or has received a notice of violation therefore is subject to ejection from the facilities. MTA Rules 1050.11 (BR 12).

All statements and BWC confirmed that § 87(2)(b) entered the subway without paying the fare. By evading the fare, § 87(2)(b) violated the MTA Rules § 87(2)(g). The MTA footage showed that § 87(2)(b) resisted being ejected by stiffening his body. The officers pushed § 87(2)(b) through the gate and released him after he exited the station. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C – Discourtesy: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia spoke discourteously to § 87(2)(b)

PO Valencia’s BWC footage (BR 01) showed that while the officers were pushing § 87(2)(b) toward the emergency exit, PO Valencia’s BWC fell on the ground. At 01:10 minutes, PO Valencia repeatedly yelled, “Don’t fucking touch me. Do not touch me,” and said that § 87(2)(b) was being disrespectful. § 87(2)(b) voice was also heard speaking in the background. At 02:00 minutes, PO Valencia picked up his BWC and reattached it to his chest. At 02:53 minutes, outside the subway station on top of the stairs, PO Valencia approached § 87(2)(b) and repeatedly yelled, “Do not touch me.” Though the BWC did not visually capture PO Valencia for the duration of one minute when he used profanity, it captured his voice.

§ 87(2)(b) testified (BR 08) that inside the subway station, PO Valencia told him that he was being disrespectful, and told him to “get the fuck out” of the station. While pushing § 87(2)(b) PO Valencia screamed, “Don’t touch me. Don’t fucking touch me.”

PO Valencia testified (BR 09) that he did not recall if he used any profanity during the incident. PO Valencia did not recall if he said, “Don’t fucking touch me.” When presented with his BWC footage, PO Valencia testified that he believed it was § 87(2)(b) who said those words. PO Valencia also testified that his BWC dropped to the ground during the incident because it is generally not very secure.

PO Garcia testified (BR 10) that PO Valencia did not use profanity toward § 87(2)(b)

The NYPD mission includes a promise to maintain a higher standard of integrity than generally expected of others, and to respect the dignity of each individual and render services with courtesy and civility. Patrol Guide Procedure 200-02 (BR 13). Officers are permitted to use discourteous language during stressful situations when scenes are so chaotic that the duty of courteousness and professional behavior should be overridden by the immediate need to maintain order. Disciplinary Case No. 2018-18951 (BR 14).

Though the BWC did not capture PO Valencia say, “Get the fuck out,” the sound began around the time after the alleged remarks were made. PO Valencia testified that it was § 87(2)(b) who said, “Don’t fucking touch me”, but the BWC audio corroborated § 87(2)(b) testimony that PO Valencia said those words. The investigation credited § 87(2)(b) account that PO Valencia used profanity during the incident. However, § 87(2)(b) resisted a lawful order by refusing to leave the station when the officers attempted to eject him. In addition, no video footage captured the beginning of the officers’ interaction with § 87(2)(b) and the circumstances surrounding that portion of the incident were unclear. The video did not show the struggle nor if physical contact was made by § 87(2)(b) to warrant the use of the profanity. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia hit § 87(2)(b) against a window.

Allegation E – Force: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Manuel Garcia hit § 87(2)(b) against a window.

Allegation F – Abuse of Authority: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia damaged § 87(2)(b) property.

Allegation G – Abuse of Authority: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Manuel Garcia damaged § 87(2)(b) property.

The MTA surveillance footage (BR 04) showed that after § 87(2)(b) was out of the gate, at 01:55 minutes, PO Valencia and PO Garcia pushed him out of the subway station toward the street exit. However, they disappeared from the camera frame after two seconds and the footage did not capture their further interactions. No MTA footage captured that part of the subway station. The existing MTA footage did not capture § 87(2)(b) hitting his head or his phone against a window.

§ 87(2)(b) testified (BR 08) that once outside the gate, officers pushed him against a window which was approximately ten feet away from the emergency gate. As a result, § 87(2)(b) head

and his phone in his left hand hit the window. § 87(2)(b) phone got cracked. § 87(2)(b) did not sustain any injuries.

PO Valencia testified (BR 09) that he did not recall pushing § 87(2)(b) against a window. PO Valencia did not know if § 87(2)(b) phone got damaged during the incident. § 87(2)(b) never complained about his phone being damaged or about any injuries. PO Valencia never damaged § 87(2)(b) phone. PO Valencia and PO Garcia only grabbed § 87(2)(b) backpack and did not touch § 87(2)(b) body or his cell phone.

PO Garcia's testimony (BR 10) was consistent with PO Valencia's account.

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation H – Abuse of Authority: At the Flushing Avenue Subway Station in Brooklyn, Police Officer Mario Valencia refused to provide his shield number to § 87(2)(b)

PO Garcia's BWC (BR 02) showed at 00:12 seconds that outside of the subway station, by the staircase, § 87(2)(b) began recording a video on his cell phone. PO Valencia approached § 87(2)(b) and stood within inches from him. PO Valencia verbally stated his shield number.

§ 87(2)(b) testified (BR 08) that after he was pushed out of the station, he asked PO Valencia for his shield number. PO Valencia approached § 87(2)(b) and screamed but § 87(2)(b) did not recall what PO Valencia said. § 87(2)(b) took photos of PO Valencia's shield number. PO Valencia did not provide his shield number to § 87(2)(b). § 87(2)(b) then left the subway station.

PO Valencia testified (BR 09) that by the stairwell, § 87(2)(b) recorded a video. PO Valencia came up closer to § 87(2)(b) so he could capture his name and shield number and was confident that § 87(2)(b) captured them on his video recording.

PO Garcia testified (BR 10) that PO Valencia verbally provided his shield number to § 87(2)(b).

The BWC corroborated officer testimony that PO Valencia allowed § 87(2)(b) to capture his shield number on his phone and verbally provided it to § 87(2)(b).

§ 87(2)(g)
§ 87(2)(b)

Allegation I – Abuse of Authority: At the 90th Precinct Stationhouse in Brooklyn, Police Officer Mardochee Saintphard did not process § 87(2)(b) complaint regarding officers.

Allegation J – Abuse of Authority: At the 90th Precinct Stationhouse in Brooklyn, Lieutenant Anthony Correia did not process § 87(2)(b) complaint regarding officers.

PO Saintphard's BWC (BR 03) showed that he spoke with § 87(2)(b) inside a police stationhouse. At 01:00 minutes, PO Saintphard pointed at a poster on a wall, and § 87(2)(b) took a photo of it. PO Saintphard explained that § 87(2)(b) could file a complaint against an officer by calling the CCRB or IAB. § 87(2)(b) stated that he wanted it to be in writing. PO Saintphard responded that § 87(2)(b) could write a letter to the CCRB or go online. § 87(2)(b) stated that

he wanted it to be at the stationhouse. PO Saintphard stated there were no “white shirts” on patrol, and § 87(2)(b) said he would wait. At 03:20 minutes, PO Saintphard stated there was no document he could provide. PO Saintphard then turned his BWC off.

The Command Log (BR 15) showed an entry at 11:05 a.m. stating that a Black male in his 20s was upset about the way he was treated by PO Valencia and was offered an opportunity to file a CCRB complaint and a phone number to CCRB. He phoned the CCRB.

§ 87(2)(b) testified (BR 05) that after leaving the subway station, he went to the 90th Precinct stationhouse where he told PO Saintphard about the earlier incident with an officer. § 87(2)(b) requested to speak with a supervisor and wanted to put in writing that he was at the stationhouse. PO Saintphard pointed at a CCRB phone number. § 87(2)(b) called the CCRB and made a complaint. After 20 minutes, Lt. Correia came, and § 87(2)(b) asked him to file a report on paper. Lt. Correia told § 87(2)(b) that he could do a report on paper, but it would have been more productive to call the CCRB. § 87(2)(b) did not make a report and left the station house.

PO Saintphard testified (BR 16) that in the lobby of the stationhouse, § 87(2)(b) told him about his earlier incident with the police and asked how he could file a complaint against an officer. PO Saintphard pointed at a poster on the wall with phone numbers and emails of the CCRB and IAB, and verbally explained how § 87(2)(b) could make a complaint with them. PO Saintphard did not remember if § 87(2)(b) asked to file a complaint at the stationhouse. PO Saintphard did not provide § 87(2)(b) with any forms to fill out. At the time of the incident, PO Saintphard did not know that a civilian could file a complaint against an officer at the stationhouse. § 87(2)(b) later spoke with a supervisor at the stationhouse, but PO Saintphard did not remember what they spoke about.

Lt. Correia testified (BR 17) that at the stationhouse, he spoke with § 87(2)(b) who told him that he wanted to file a complaint against an officer. Lt. Correia told § 87(2)(b) that he could file a complaint at the stationhouse or call the CCRB or send a letter. § 87(2)(b) decided to call the CCRB. Lt. Correia did not provide § 87(2)(b) any forms to fill out. § 87(2)(b) then left the location. Lt. Correia prepared a Command Log entry documenting his interaction with § 87(2)(b).

Complaints against uniformed members of service may be made at any patrol precinct. Upon receipt of a complaint from a civilian alleging misconduct by a uniformed member of the service, an officer should interview the complainant and provide them with a copy of a Civilian Complaint Report (PD313-154) to be prepared in complainant’s own handwriting. Patrol Guide Procedure 207-31 (BR 18).

As PO Saintphard’s BWC and his statement corroborated § 87(2)(b) testimony, the investigation determined by a preponderance of the evidence that PO Saintphard did not take § 87(2)(b) complaint at the stationhouse as required by the Patrol Guide. § 87(2)(g)

As PO Saintphard did not process § 87(2)(b) complaint at the stationhouse § 87(2)(g)

Allegation K – Untruthful Statement: Police Officer Mario Valencia provided a misleading official statement to the CCRB.

The investigation determined that PO Valencia provided a misleading official statement to the CCRB during his interview.

During his interview, PO Valencia testified (BR 09) that he did not recall if he used any profanity during the incident. PO Valencia did not recall if he said, “Don’t fucking touch me.” When presented with his BWC, PO Valencia testified that he believed § 87(2)(b) said those words.

PO Valencia’s statement contains the following:

08:58: Inv. Pavlova – “While escorting § 87(2)(b) did you use any profanity?”

09:02: PO Valencia – “I don’t recall of any used profanity, but if was... it was done. Right now, was it used? I don’t recall it.”

09:12: Inv. Pavlova – “Ok, and it was specifically alleged, um, that an officer said, ‘Don’t fucking touch me.’ Did you say that to § 87(2)(b)?”

09:22: PO Valencia – “I don’t recall saying that, but I guess we can review the tape and if that comes across.”

25:00: Inv. Pavlova – “Ok, so I’m just pausing here at one minute and 12 seconds. Um, did you hear somebody say, ‘Don’t fucking touch me.’?”

25:07: PO Valencia – “Um, like I said again, based on the camera, go with it, but I don’t remember what exact words was exchanged.”

25:15: Inv. Pavlova – “So, I am just going to increase the volume a little bit and I just want to see if you can hear those words. So, I am just going to go back to, like, 1:05, and in about five seconds somebody will say it. Ok, I am pausing at 1:12.”

25:40: PO Valencia – “Ok.”

25:42: Inv. Pavlova – “Could you hear it?”

25:43: PO Valencia – “Ah, I heard him, but that was it.”

25:47: Inv. Pavlova – “So you, you heard somebody say, ‘Don’t fucking touch me.’?”

25:50: PO Valencia – “Do I heard whatever him saying? Yes.”

25:54: Inv. Pavlova – “And, um, do you know who said those words?”

25:55: PO Valencia – “Who sounds... like there was the gentleman, who... um, § 87(2)(b) Yea.”

26:03: Inv. Pavlova – “Ok, so, just for the record, so the words that you heard, ‘Don’t fucking touch me,’ you believe that § 87(2)(b) said those words?”

26:08: PO Valencia – “Those are his words, yes.”

A misleading statement is a statement that is intended to misdirect the fact finder, and materially alter the narrative by intentionally omitting a material fact or making repeated claims of “I do not remember” when a reasonable person under similar circumstances would recall, or have been aware of, such material facts. A material fact is a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. Administrative Guide Procedure 304-10 (BR 19). A false statement that merits Departmental discipline must not be a “mere denial of an administrative charge of misconduct” but a statement that creates a “false description of events” as per Disciplinary Case #2016-16097 (BR 20).

The BWC captured PO Valencia telling § 87(2)(b) “Don’t fucking touch me. Do not touch me.” Though the BWC did not capture PO Valencia visually, it captured his voice, as mentioned in **Allegation C**. PO Valencia initially stated that he did not recall using profanity. When presented with his BWC, PO Valencia stated that it was § 87(2)(b) who said those words, § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
- PO Valencia has been a member of service for 17 years and has been a subject in eight prior CCRB complaints and 14 allegations, none of which were substantiated. § 87(2)(g)
- PO Garcia has been a member of service for two years and has been a subject in one prior CCRB complaint and one allegation, which was mediated. § 87(2)(g)
- PO Saintphard has been a member of service for three years, and this is the first CCRB complaint to which he has been a subject.
- Lt Correia has been a member of service for 22 years, and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 1, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 22).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 6

Investigator:	Sasha Pavlova	Investigator Sasha Pavlova	7/06/2022
	Signature	Print Title & Name	Date

Squad Leader:	Jessica Peña	IM Jessica Pena	7/7/2022
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date